

**In the Drawing:**

Please amend the drawings as follows.

Fig. 1 has been amended to remove the shading and to remove the box labeled "To" that is positioned above the box labeled "Verify."

It is not believed that Fig .1, as amended, contains new matter.

## REMARKS

### **A. Objection to Drawings**

In the Office Action mailed on December 26, 2007, Fig. 1 was objected to for being too dark. Applicants are amending Fig. 1 so that the shading has been removed. Accordingly, the objection has been overcome and should be withdrawn.

### **B. Objection to Claims**

Claims 1-31 were objected to for various informalities. In particular, claim 1 was objected to for using the phrase "monitoring one or more factors" instead of "monitoring of one or more factors." Applicants traverse the objection. The phrase in question is preceded by the word "said" and so the phrase in full is "said monitoring one or more factors." Proper antecedent basis for the full phrase can be found in line 4 of claim 1 presented on page 3 of this Amendment. If the phrase is amended in the manner suggested by the Examiner, then there would not be proper antecedent basis for the new phrase. Since the phrase in question is in proper form and has proper antecedent basis, the objection is improper and should be withdrawn.

Claim 1 was also objected to for using the phrase "based on said automatically modifying said initial prescription" instead of "based on said automatic modification of said initial prescription." Applicants traverse the objection. The phrase "said automatically modifying said initial prescription" has proper antecedent basis in line 6 of claim 1 presented on page 3 of this Amendment while the proposed phrase "said automatic modification of said initial prescription"

does not have proper antecedent basis in the claim. Accordingly, the objection is improper and should be withdrawn.

Claims 12 and 13 were objected to for using the phrase "said automatically monitoring" instead of "said automatic monitoring." Applicants traverse the objection. The phrase "said automatically monitoring" has proper antecedent basis in line 4 of claim 1 presented on page 3 of this Amendment while the proposed phrase "said automatic monitoring" does not have proper antecedent basis in the claim. Accordingly, the objection is improper and should be withdrawn.

Claim 16 was objected to for failing to include "application" after "therapeutic." In view of the present amendment to claim 16 that inserts "application" after "therapeutic," the objection has been overcome and should be withdrawn.

Claim 17 was objected to because the phrase "automatically monitoring one or more factors, exclusive of a position of said area of interest, that could affect the effectiveness of said automatically delivering said first dose of therapeutic radiation to said area of interest of said patient based on said diagnosis process" allegedly merged incomplete thoughts. Applicants traverse the objection because the phrase is clear in meaning. In particular, the phrase states that one or more factors are automatically monitored, wherein such factors do not include a position of the area of interest. The phrase further states that the factors monitored are ones that could affect the effectiveness of the automatically delivering process recited at lines 3 and 4 of claim 17 presented on page 6 of this Amendment. Since the phrase is clear in meaning, the objection

should be withdrawn.

It is noted that the Examiner at page 2 of the Office Action has implied that the word "therapy" should be inserted after "said" in line 6. Assuming the Examiner's reference to line 6 refers to claim 17, it is unclear to which of the two instances of "said" in line 6 are being referred. Furthermore, the proposed insertion of "therapy" makes no sense as there is no previous mention of "therapy" other than the preambles recitation of "active therapy redefinition." Since the insertion of "active therapy redefinition" after any of the occurrences of "said" make no sense, the Examiner's implication has no merit.

Claim 17 was objected to for using the phrase "said automatically calculating" instead of "automatic calculation." Applicants traverse the objection. The phrase "said automatically calculating" is referring to the previously recited "automatically calculating" process. The Examiner's proposed replacement would change the meaning of the claim in a manner contrary to Applicants' intended meaning since it would not refer back to the "automatically calculating" process. Accordingly, the objection is improper and should be withdrawn.

Claim 21 was objected to for using the phrase "said automatically calculating" instead of "said automatic calculation of." Applicants traverse the objection. The phrase "said automatically calculating" has proper antecedent basis in line 8 of claim 17 presented on page 3 of this Amendment while the proposed phrase "said automatic calculation of" does not have proper antecedent basis in the claim. Accordingly, the objection is improper and should be

withdrawn.

Claim 22 was objected to for using the phrase "said automatically performing" instead of "said automatic performance of." Applicants traverse the objection. The phrase "said automatically performing" has proper antecedent basis in line 2 of claim 21 presented on page 7 of this Amendment while the proposed phrase "said automatic performance of" does not have proper antecedent basis in the claim. Accordingly, the objection is improper and should be withdrawn.

Claims 25-27 were objected to for using the phrase "said automatically monitoring" instead of "said automatic monitoring." Applicants traverse the objection. The phrase "said automatically monitoring" has proper antecedent basis in line 5 of claim 17 presented on page 6 of this Amendment while the proposed phrase "said automatic monitoring" does not have proper antecedent basis in the claim. Accordingly, the objection is improper and should be withdrawn.

Note that the amendment to claim 16 corrects an obvious and inadvertent omission. Accordingly, the amendment is not being made for reasons related to patentability as defined in *Festo Corporation v. Shoketsu Kinzoku Kogyo Kabushiki Co., Ltd*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) (*en banc*), *overruled in part*, 535 U.S. 722 (2002).

**C. 35 U.S.C. § 102**

Claims 1-31 were rejected under 35 U.S.C. § 102(e) as being anticipated by Kapatoes et al. Applicants traverse the rejection. In particular, independent claims 1 and 17 recite

“automatically monitoring one or more factors, exclusive of a position of said area of interest, that could affect the effectiveness of” either 1) “said initial prescription” (claim 1) or 2) “said automatically delivering said first dose” (claim 17). At page 4 of the Office Action, the Examiner asserts that the above mentioned processes of “automatically monitoring” are met by the monitoring of dosage and therapy received during the treatment as recited in column 3, lines 5-45 and column 7, lines 1-30 of Kapatoes et al. While the passages do mention computing dosage and intensity patterns of an image, such computation is necessarily dependent on using the position of the area of interest. Indeed, Kapatoes et al. is primarily concerned about how to direct radiation to a particular area based on geometrical factors. For example, see the discussion at column 6, lines 31-50 of Kapatoes et al. on how the area of interest is of importance when computing dosage and intensity patterns of an image. Since Kapatoes et al.’s monitoring of factors depends on a position of an area of interest and claims 1 and 17 explicitly recite that the automatically monitored factor(s) are “exclusive of a position of said area of interest,” claims 1 and 17 are not anticipated by Kapatoes et al.

Claims 2-16 and 18-31 depend directly or indirectly on claim 1 or claim 17 and so their rejections are improper for at least the same reasons as stated above with respect to claim 1.

The rejections of claims 4-6 and 11 are improper for the additional reason that Kapatoes et al. does not disclose the recited factors of: 1) anatomical and physiological variations within the area of interest (claim 4), 2) a stage of disease within the area of interest (claim 5), 3) a stage

of treatment of the area of interest (claim 6) and 4) changes in applying the first and second therapeutic applications due to unscheduled breaks in the method of treatment (claim 11). It is noted that the Examiner has not identified one passage of Kapatoes et al. as anticipating claims 4-6 and 11.

The rejections of claims 8-10 and 25-27 are improper for the additional reason that Kapatoes et al. does not disclose the recited monitoring of: 1) laboratory testing of the patient (claims 8 and 25), 2) physiological measurement of the patient (claims 9 and 26) and 3) clinical observation of the patient (claims 10 and 27). It is noted that the Examiner has not identified one passage of Kapatoes et al. as anticipating claims 8-10 and 25-27.

The rejections of claim 18, 20 and 21 are also improper because Kapatoes et al. fails to disclose either 1) analyzing relevant information regarding a disease state and a condition of the patient (claim 18) or 2) performing decisions concerning the type and extent of disease (claims 20 and 21).

The rejection of claim 30 is improper because Kapatoes et al. does not disclose the recited "automatically modifying a position of said patient based on said comparing."

**D. New Claim 32**

Dependent claim 32 is being presented to further clarify what the "one or more factors" recited in claim 17 constitute. Since Kapatoes et al. does not disclose automatically monitoring one of: 1) anatomical and physiological variations within said area of interest, 2) a stage of

disease within said area of interest; 3) a stage of treatment of said area of interest or 4) changes in applying said first and second therapeutic applications due to unscheduled breaks in said method of treatment," Kapatoes et al. does not anticipate the claims.

New claim 32 is being presented solely to provide additional coverage for the method of claim 17. Accordingly, the presentation of claim 32 is not being done for reasons related to patentability as defined in *Festo*.

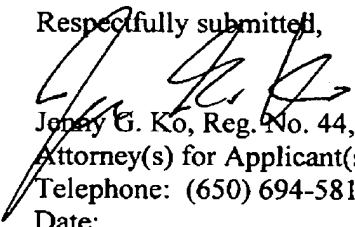
### CONCLUSION

In view of the arguments above, Applicants respectfully submit that all of the pending claims 1-32 are in condition for allowance and seek an early allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an interview would be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorney at (650) 694-5810.

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